

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LEDALE SMITH, ) CASE NO. CV 08-5245-SJO (PJW)  
Plaintiff, )  
v. ) ORDER GRANTING DEFENDANT JAMES  
JAMES TILTON, ) TILTON'S  
Defendant. ) MOTION TO DISMISS COMPLAINT  
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Before the Court is Defendant Tilton's Motion to Dismiss the Complaint on the ground that Plaintiff has failed to allege that Tilton played any role in Plaintiff's claimed civil rights violations. (See Docket No. 10.) For the following reasons, the motion is GRANTED.

On August 14, 2008, Plaintiff, a state prisoner, filed a civil rights action against James Tilton, identified by Plaintiff as the Director of the California Department of Corrections and Rehabilitation ("CDCR"), and three unnamed correctional officers.<sup>1</sup> (Complaint at 3-4.) Plaintiff alleged that he was seriously injured

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<sup>1</sup> According to Defendant Tilton, he was not the Director of the CDCR, but was, instead, the Secretary. (Motion to Dismiss at 4.)

1 in an accident when he was being transported in a corrections bus from  
2 one prison to another. (Complaint at 4A-6.<sup>2</sup>) He claimed that the  
3 unidentified corrections officers refused to administer medical  
4 treatment to him after the accident and that he is still waiting for  
5 proper treatment. (Complaint at Exhibit A.) His only allegation  
6 against Defendant Tilton was that Tilton failed to provide the name of  
7 the officers after the accident. (Complaint at No. 3.)

8 On October 8, 2008, Defendant Tilton filed the instant Motion to  
9 Dismiss the Complaint, arguing that Plaintiff had made no allegation  
10 linking Tilton to the claimed acts of deliberate indifference  
11 committed by the corrections officers. (Motion at 4-5.) On November  
12 10, 2008, Plaintiff filed an opposition to the motion. In it, he  
13 stated that he was "willing to dismiss Defendant Tilton from this  
14 action." (Opposition at 1.)

15 In order to pursue an action against Defendant Tilton, Plaintiff  
16 has to allege a cognizable claim against him. Here, Plaintiff has  
17 failed to do so. As Plaintiff concedes, Defendant Tilton played no  
18 role in the acts he complains of. Further, Tilton cannot be held  
19 liable for the acts of the corrections officers under a theory of  
20 *respondeat superior*. See *Monell v. Dept. of Soc. Servs.*, 436 U.S.  
21 658, 663 (1978). As such, he is entitled to dismissal at this stage.

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28       <sup>2</sup> The Court has designated as "4A" the unnumbered page of the  
Complaint between pages 4 and 5.

For all these reasons, Defendant Tilton's motion to dismiss is granted and he is dismissed from this action with prejudice.

3 IT IS SO ORDERED.

4 DATED: February 18, 2009

S. James Oter

S. JAMES OTERO  
UNITED STATES DISTRICT JUDGE

Presented by

Patrick J. Walsh

PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE